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28 *Attorneys for Defendants Ripple Labs Inc.,  
XRP II, LLC, and Bradley Garlinghouse*

29 In re RIPPLE LABS INC. LITIGATION,

30  
31 This Document Relates to:

32 ALL ACTIONS

33 Case No. 4:18-cv-06753-PJH

34 **JOINT ADMINISTRATIVE MOTION TO  
35 CONSIDER WHETHER CASES SHOULD  
36 BE RELATED AND CONSOLIDATED  
37 FOR PRETRIAL PURPOSES AND  
38 [PROPOSED] ORDER**

39 (Civil L.R. 3-12 and 7-11)

40 Judge: Hon. Phyllis J. Hamilton

1 Pursuant to this Court’s Order, Dkt. 35 at ¶¶ 6–7, as well as Northern District of California  
 2 Civil Local Rules 3-12(b) and 7-11(a), and in support of Order of Sua Sponte Referral, Dkt. 72,  
 3 No. 3:21-cv-06518-SK (see Civil Local Rules 3-12(c) and 3-12(e)), Defendants Ripple Labs Inc.,  
 4 XRP II, LLC, and Bradley Garlinghouse (collectively “Ripple”) and Lead Plaintiff Bradley  
 5 Sostack, by and through their undersigned counsel, hereby move the Court to consider whether  
 6 *Toomey v. Ripple Labs, Inc.*, No. 21-cv-06518-SK, a case recently transferred to this District from  
 7 the Middle District of Florida, is related to the putative class action, *In re Ripple Labs Inc. Litig.*,  
 8 pending before this Court.<sup>1</sup>

9 The Court previously granted similar motions with respect to other actions deemed related.  
 10 Dkts. 101, 110. In order of filing date, the matters submitted for determination under Civil Local  
 11 Rule 3-12(b) are as follows:

<u>Case Name</u>	<u>Case Number</u>	<u>Filing Date</u>
<i>In re Ripple Labs Inc. Litigation</i>	4:18-cv-6753-PJH	August 5, 2019 <sup>2</sup>
<i>Toomey v. Ripple Labs, Inc. et al.</i>	3:21-cv-06518-SK	January 25, 2021 (transferred to this District on August 24, 2021)

16 Civil Local Rule 3-12(a) provides that an action is related to another “when (1) [t]he  
 17 actions concern substantially the same parties, property, transaction or event; and (2) [i]t appears  
 18 likely that there will be an unduly burdensome duplication of labor and expense or conflicting  
 19 results if the case are conducted before different Judges.” These criteria are met here.

20 The *Toomey* action raises claims that concern substantially the same events as the *In re*  
 21 *Ripple Labs* matter, and that involve substantially similar parties. Notably, based on the allegations  
 22 in *Toomey*, it appears from the face of the *Toomey* complaint that Plaintiffs Toomey and Sergalis  
 23 are members of the putative class alleged in the *In re Ripple Labs* action, which consists of all  
 24

25 <sup>1</sup> Per Civil Local Rule 7-11(a), a declaration explaining why a stipulation could not be obtained  
 26 is attached as Exhibit 1. Defendants understand that Plaintiffs Toomey and Sergalis intend to  
 object to consolidation and/or seek relief from this Court’s Order on Consolidation, Dkt. 35.

27 <sup>2</sup> Mr. Sostack filed a Consolidated Complaint in this Court on August 5, 2019, Dkt. 63, which  
 28 superseded three earlier actions filed in 2018 in California Superior Court that had been removed  
 to the Northern District of California, Dkt. 2-1, 2-2.

1 purchasers of XRP. *See* Second Amended Complaint, *Toomey v. Ripple Labs, Inc.*, No. 21-cv-  
 2 06518-SK (N.D. Cal. March 26, 2021), Dkt. 26 at ¶¶ 20–21 (explaining when and how much XRP  
 3 Plaintiffs purchased). Moreover, the two cases are premised on the same theory of liability: that  
 4 Defendants’ distributions of XRP, a digital asset, constitute “investment contracts” that render  
 5 them securities under federal and/or state securities laws, but Defendants did not register XRP as  
 6 required. *E.g.*, *id.* at ¶¶ 1–8. In *In re Ripple Labs*, claims are asserted under federal securities law  
 7 and California law. *Toomey* asserts claims against Defendants under Florida law, but has  
 8 acknowledged that the standards for whether XRP constitutes a security “are identical” between  
 9 Florida law and federal law. *Id.* ¶ 143. *Toomey*’s claims are supported with similar allegations,  
 10 *e.g.*, *id.* at ¶¶ 51–61 (overlapping allegations about XRP’s marketing), ¶¶ 54–197 (overlapping  
 11 allegations about listing XRP on exchanges), ¶¶ 148–62 (relying on same SEC guidance and  
 12 framework). Finally, Ripple Labs Inc., XRP II, LLC, and Bradley Garlinghouse are defendants in  
 13 both actions.

14 Defendants moved to transfer the *Toomey* case to this Court. In granting Ripple’s motion  
 15 to transfer the *Toomey* action to this district under both the “first-to-file” rule and Section 1404(a),  
 16 the Middle District of Florida explained “[Toomey’s] claims encompass and are based on the same  
 17 alleged liability of the private actions consolidated in the California Action. Further, the parties  
 18 are similar and the legal and factual issues are substantially similar so that Plaintiff’s interests are  
 19 represented in the California action through the putative class members.” No. 3:21-cv-000093-  
 20 BJD-JBT, Dkt. 69 (Aug. 20, 2021).

21 Because this action and *Toomey* involve and concern nearly identical parties, transactions,  
 22 and events, it would be inefficient, unduly burdensome, and duplicative to have these cases  
 23 proceed before two different judges. Relating these actions serves the interests of justice and  
 24 furthers judicial economy.

25 On March 18, 2019, this Court issued an Order Regarding Publication of Notice Pursuant  
 26 to the Private Securities Litigation Reform Act, 15 U.S.C. § 77z-1, Briefing Schedule On Motion  
 27 For Appointment As Lead Plaintiff, Filing of Lead Plaintiffs’ Consolidated Complaint And  
 28 Defendants’ Response To The Consolidated Complaint (“Order”). Dkt. 35. The Order provides

1 that, once filed, “[t]he consolidated complaint shall be the operative complaint and shall supersede  
 2 all complaints filed in any action consolidated into this Action.” *Id.* at ¶ 4. The Court held that  
 3 “[a]ll related actions that are subsequently filed in . . . this District shall be consolidated into this  
 4 action for pretrial purposes,” and then instructed that “[t]he parties shall file an Administrative  
 5 Motion to Consider Whether Cases Should be Related pursuant to Civil L.R. 3-12 whenever a case  
 6 that should be consolidated into this action is filed in . . . this District.” *Id.* at ¶¶ 6–7. Thus, should  
 7 the Court determine that these actions are related, it should also order the cases consolidated for  
 8 pretrial purposes. *Id.*

9 For the foregoing reasons, Ripple and Mr. Sostack respectfully request that this Court order  
 10 that (1) *Toomey* is related to this action, and (2) the cases are consolidated for pretrial purposes  
 11 consistent with this Court’s prior order.

12

13 Dated: September 3, 2021

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Respectfully submitted,

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## **SIGNATURE ATTESTATION**

I, Suzanne E. Nero, hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized its filing.

By: /s/ Suzanne E. Nero  
Suzanne E. Nero

## [PROPOSED] ORDER

For the reasons set forth above, the Court ORDERS that *Toomey v. Ripple Labs, Inc.*, No. 21-cv-06518-SK is related and consolidated to this instant action and directs the clerk to take all actions prescribed to it under paragraph 7 of this Court's March 18, 2019 order regarding publication of notice (Dkt. 35).

## IT IS SO ORDERED.

Dated: , 2021

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Hon. Phyllis J. Hamilton  
United States District Judge